

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARICELA GARCIA

Plaintiff,

vs.

BALFOUR BEATTY
COMMUNITIES, LLC

Defendant.

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CIVIL ACTION NO. 3:21-CV-256

DEFENDANT’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441, Defendant, Balfour Beatty Communities, LLC (“Defendant”), removes this civil action filed by Maricela Garcia (“Plaintiff”) in the 327th Judicial District Court, El Paso County, Texas to the United States District Court for the Western District of Texas. Defendant respectfully show the Court as follows:

I. INTRODUCTION

1. On August 31, 2021, Plaintiff filed her Original Petition in an action entitled *Maricela Garcia v. Balfour Beatty Communities, LLC*, in the 327th Judicial District Court of El Paso County, Texas; Cause No. 2021DCV3073 (the “State Court Action”). *See Ex. C*.

2. Defendant’s counsel accepted service on September 16, 2021. Defendant timely answered Plaintiff’s Original Petition on October 7. *See Ex. F*.

3. Therefore, this Notice of Removal is timely filed within thirty (30) days after receipt of service. 28 U.S.C. § 1446(b).

4. There are no other defendants named in the Petition other than Defendant.

II. BASIS OF REMOVAL: DIVERSITY JURISDICTION

1. The basis for this Court's jurisdiction and the removal of this case to this Court is diversity jurisdiction pursuant to 28 U.S.C. § 1332. Diversity of citizenship exists where the suit is between citizens of different states and the amount in controversy exceeds \$75,000. *See Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1330 (5th Cir. 1995); 28 U.S.C. § 1332.

2. Plaintiff is an individual and a citizen of El Paso, Texas. *See Ex. C, Pl.'s Pet.* ¶ 2.

3. A corporation is considered a citizen of (1) every U.S. state and foreign state where it is incorporated, and (2) the US state or foreign state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). The citizenship of unincorporated entities, such as limited partnerships, limited liability companies, and unincorporated business trusts, is determined by the citizenship of its members and/or partners. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-97 (1990); *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079-81 (5th Cir. 2008).

4. Defendant Balfour Beatty Communities, LLC is organized under the laws of Delaware. *See Ex. G* ¶ 3. The sole member of Balfour Beatty Communities, LLC is Balfour Beatty Investments, Inc., a Delaware Corporation with its principal place of business in Pennsylvania. *See Ex. G* ¶ 4. Defendant's citizenship is determined by that of its single member, Balfour Beatty Investments, Inc. Therefore, Defendant is a citizen of Delaware and Pennsylvania. There is complete diversity among the parties.

5. Additionally, Plaintiff seeks recovery of damages exceeding \$200,000 but less than \$1,000,000. *See Ex. C, Pl.'s Pet.* ¶ 22. Accordingly, the statements of the relief sought in the Petition exceed more than \$75,000. Based on the complete diversity of citizenship between the parties and the amount in controversy, jurisdiction is proper under 28 U.S.C. § 1332.

6. Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending.”

7. Venue is proper in the Western District of Texas, El Paso Division because all or a substantial part of the actions complained of in Plaintiff’s Original Petition allegedly occurred in El Paso County, Texas. *See* Ex. C, Pl.’s Pet. ¶ 6. Plaintiff also initiated this action in El Paso County.

5. Therefore, this Court has jurisdiction over this case and removal is proper pursuant to 28 U.S.C. §§ 1332, 1441.

III. PROCEDURAL STATEMENTS

6. As required by 28 U.S.C. § 1446(a), Defendant’s Index of Documents for Removal is attached as Exhibit A. True and correct copies of Plaintiff’s Original Petition, and any other pleadings or orders on file in the State Court Action are attached hereto as Exhibits B-F.

7. Defendant has or will promptly file a true and correct copy of this Notice of Removal with the Clerk of the 327th Judicial District in El Paso County, Texas, as required by 28 U.S.C. § 1446(d). *See Ex. H.*

8. Written notice of the filing of this Notice of Removal has been or will be given to Plaintiff as required by law.

9. The following is a list of counsel of record for the parties:

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Counsel for Plaintiff

Counsel for Defendant

IV. CONCLUSION

10. For these reasons, Defendant requests that the above-styled action, pending in the 327th Judicial District Court in El Paso County, Texas, be removed to the United States District Court for the Western District of Texas, El Paso Division.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this 14th, day of October, 2021

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COUNSEL FOR PLAINTIFF

/s/ Michael J. DePonte

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